

AMENDED IN ASSEMBLY APRIL 1, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2421

Introduced by Assembly Member Nestande
(Coauthor: Assembly Member Allen)

February 21, 2014

~~An act relating to taxation.~~ *An act to add and repeal Section 23692 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.*

LEGISLATIVE COUNSEL'S DIGEST

AB 2421, as amended, Nestande. ~~Corporation taxes: credit: education scholarship organizations.~~ *Corporation Tax Law: credits: Foster Youth Opportunities Investment Act.*

The Corporation Tax Law allows various credits against the tax imposed by that law.

This bill, for taxable years beginning on or after January 1, 2015, and before January 1, 2020, would allow a credit against the tax imposed under that law for 50% of monetary contributions to nonprofit education scholarship organizations, as defined, to fund qualified scholarships for specified pupils to attend private schools, as defined, or for transportation costs to attend private, public, or charter schools. The bill would provide that the credit would not exceed \$200,000 per taxpayer, that the credit would be awarded on a first-come, first-serve basis, and that the credit would have an aggregate cap of \$50,000,000 for each calendar year. The bill would require the Franchise Tax Board and the State Department of Education to administer the credit, as specified.

This bill would take effect immediately as a tax levy.

~~The Personal Income Tax Law and the Corporation Tax Law allow various credits against the taxes imposed by those laws.~~

~~This bill would state that it is the intent of the Legislature to enact legislation that would allow a credit against the tax imposed by the Corporation Tax Law in the amount of 50% of a charitable contribution to a nonprofit education scholarship organization that provides tuition and transportation fee assistance for students with special learning needs, foster youth, and children from low-income families, who attend public, charter, or private schools. It is the intent of the Legislature that the credit shall not exceed \$200,000 per taxpayer, that the credit be awarded on a first-come, first-serve basis, and that the credit have an aggregate cap of \$50,000,000.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 *SECTION 1. This act shall be known and may be cited as the*
- 2 *Foster Youth Opportunities Investment Act.*
- 3 *SEC. 2. The Legislature finds and declares the following:*
- 4 *(a) Providing tax incentives to encourage private investments*
- 5 *for the common good is sound public policy.*
- 6 *(b) Expanding educational opportunities and improving the*
- 7 *quality of, and access to, educational services within the state are*
- 8 *valid public purposes that the Legislature may promote using its*
- 9 *sovereign power to determine tax policy.*
- 10 *(c) Creative tax policy can inspire greater charitable*
- 11 *contributions and public-private partnerships that ensure*
- 12 *additional resources for the education of all children in California.*
- 13 *(d) Encouraging voluntary support for education, without*
- 14 *prejudice for or against any state-sanctioned educational*
- 15 *enterprise promotes the state's interest and common good in*
- 16 *providing the highest quality education to all children in the state.*
- 17 *(e) At a time when fiscal realities challenging California school*
- 18 *communities demand innovative ways to deliver vital education*
- 19 *services to public and private pupils in kindergarten and grades*
- 20 *1 to 12, inclusive, charitable giving for educational purposes*
- 21 *should be stimulated.*
- 22 *(f) California benefits from ensuring the accessibility and*
- 23 *viability of strong public, as well as, private school options in*

1 *educating students, especially for those with the greatest needs:*
2 *our foster youth.*

3 *SEC. 3. Section 23692 is added to the Revenue and Taxation*
4 *Code, to read:*

5 *23692. (a) For each taxable year beginning on or after*
6 *January 1, 2015, and before January 1, 2020, there shall be*
7 *allowed as a credit against the “tax,” as defined in Section 23036,*
8 *an amount equal to 50 percent of the monetary contribution*
9 *provided by a taxpayer to a nonprofit education scholarship*
10 *organization to fund qualified K-12 education scholarships for a*
11 *specified pupil to attend private school or to fund partial or full*
12 *payments of fees associated with the general costs of transportation*
13 *to attend a private, public, or charter school.*

14 *(b) For purposes of this section:*

15 *(1) “Education scholarship organization (ESO)” means a*
16 *charitable institution in this state that meets the following:*

17 *(A) Is organized and operated with the primary purpose of*
18 *providing qualified K-12 education scholarships to pupils attending*
19 *a private school in California.*

20 *(B) (i) Allocates at least 80 percent of contributions for which*
21 *a credit is claimed for qualified K-12 education scholarships for*
22 *ESOs with three or more years of audits.*

23 *(ii) Allocates at least 90 percent of contributions for which a*
24 *credit is claimed for qualified K-12 education scholarships for*
25 *ESOs with less than three years of audits.*

26 *(C) Makes qualified K-12 education scholarships available for*
27 *pupils from more than one school.*

28 *(D) Retains data on the progress of the pupils participating in*
29 *qualified K-12 education scholarships on nationally available*
30 *norm-referenced tests to evaluate the program’s efficacy.*

31 *(E) Submits to the Franchise Tax Board financial and*
32 *compliance audit reports performed by a certified public*
33 *accountant.*

34 *(F) Submits to the State Department of Education quarterly*
35 *reports on the number of qualified K-12 education scholarship*
36 *recipients and the schools that the recipients attend.*

37 *(G) Applies to participate in this credit program with the*
38 *Franchise Tax Board.*

39 *(2) “Nonprofit” means an organization that meets all of the*
40 *following requirements:*

1 (A) *Is formed as any of the following:*

2 (i) *A nonprofit public benefit corporation described in Part 2*
3 *(commencing with Section 5110) of Division 2 of Title 1 of the*
4 *Corporations Code.*

5 (ii) *A nonprofit religious corporation described in Part 4*
6 *(commencing with Section 9110) of Division 2 of Title 1 of the*
7 *Corporations Code.*

8 (iii) *Any other charitable corporation, as defined by Section*
9 *12582.1 of the Government Code.*

10 (iv) *A duly authorized foreign nonprofit corporation that has*
11 *complied with the registration requirements under Section 6910*
12 *of, and Chapter 21 (commencing with Section 2100) of Division*
13 *1 of Title 1 of, the Corporations Code.*

14 (B) *An organization exempt from federal income tax as an*
15 *organization described in Section 501(c)(3) of the Internal Revenue*
16 *Code.*

17 (3) *“Qualified K-12 education scholarship” means either of*
18 *the following:*

19 (A) *An award of tuition assistance amounting to at least 65*
20 *percent of the basic state per-pupil funding, or a private school’s*
21 *actual tuition and fees, whichever is less, that meets all of the*
22 *following requirements:*

23 (i) *An initial K-12 education scholarship shall be awarded to*
24 *a specified pupil in kindergarten through grade 12.*

25 (ii) *May be renewed at the request of the specified pupil for*
26 *each school year until graduation from high school.*

27 (iii) *Shall be portable and follow the specified pupil from one*
28 *school to another.*

29 (iv) *Shall be provided to a private school of the specified pupil’s*
30 *choosing under the following conditions:*

31 (I) *Each ESO shall establish criteria for granting scholarships*
32 *that meet the requirements of this section.*

33 (II) *The pupil receiving the assistance shall remain a specified*
34 *pupil.*

35 (III) *The specified pupil shall attend a private school.*

36 (IV) *The specified pupil shall remain enrolled and in attendance*
37 *at the private school throughout the school year unless excused*
38 *by the applicable program for illness or other good cause.*

1 (V) *The specified pupil and a parent or legal guardian of the*
2 *specified pupil shall comply with all applicable policies of the*
3 *private school.*

4 (VI) *A parent or legal guardian of the specified pupil shall*
5 *ensure that the pupil has reliable transportation to and from the*
6 *applicable program.*

7 (B) *Financial assistance for a specified pupil to partially or*
8 *fully pay for the fees associated with the general costs of*
9 *transportation to attend a private, public, or charter school.*

10 (C) *Financial assistance for a specified pupil to attend college*
11 *courses after graduation from high school provided by any public*
12 *or independent college where the specified pupil has been admitted*
13 *to attend.*

14 (4) *“Specified pupil” means a minor who has applied for a*
15 *K-12 education scholarship and is a pupil within foster care who*
16 *has been placed in a foster care system within the State of*
17 *California at any time prior to graduating high school.*

18 (A) *A specified pupil is not required to be previously enrolled*
19 *in a public school or charter school to participate.*

20 (B) *A specified pupil remains eligible for a scholarship until he*
21 *or she graduates from high school or leaves the foster care*
22 *program.*

23 (5) *“Private school” means a person, firm, association,*
24 *partnership, or corporation offering or conducting private school*
25 *instruction in the State of California on the elementary or high*
26 *school level, that meets all of the following requirements:*

27 (A) *Is accredited by the Western Association of Schools and*
28 *Colleges or an affiliated organization.*

29 (B) *Has filed a current private school affidavit with the State*
30 *Department of Education in accordance with Section 33190 of the*
31 *Education Code.*

32 (C) *Complies with applicable provisions of the Health and*
33 *Safety Code.*

34 (D) *Complies with applicable provisions of the Fair Employment*
35 *and Housing Act (Part 2.8 (commencing with Section 12900) of*
36 *Division 3 of Title 2 of the Government Code).*

37 (E) *Utilizes background checks in connection with hiring all*
38 *school employees, consistent with the standards set forth in*
39 *subdivision (a) of Section 44237 of the Education Code.*

- 1 (F) Requires a specified pupil to take a nationally available
2 norm-referenced test.
- 3 (G) Has obtained, if it has been in operation for less than three
4 years, a surety bond or letter of credit in an amount equal to the
5 value of the education scholarship payments for one quarter.
- 6 (c) The amount of the credit shall not exceed two hundred
7 thousand dollars (\$200,000) per taxpayer, per taxable year.
- 8 (d) The taxpayer shall receive a certification by the Franchise
9 Tax Board upon a determination that the contribution meets the
10 requirements of this section and shall apply with the Franchise
11 Tax Board to receive a credit.
- 12 (e) In the case where the credit allowed by this section exceeds
13 the “tax,” the excess may be carried over to reduce the “tax” in
14 the following year, and succeeding five years if necessary, until
15 the credit is exhausted.
- 16 (f) This credit shall be in lieu of any other credit or deduction
17 that the taxpayer may otherwise claim pursuant to this part with
18 respect to a monetary contribution described in subdivision (a).
- 19 (g) This credit shall be claimed on a timely filed original return.
- 20 (h) (1) The aggregate amount of credits allowed under this
21 section shall not exceed fifty million dollars (\$50,000,000) for
22 each calendar year.
- 23 (2) The allocation of credits shall be on a first-come, first-serve
24 basis.
- 25 (3) The Legislature may increase the amount in paragraph (1).
- 26 (i) The Franchise Tax Board and the State Department of
27 Education shall administer this credit.
- 28 (1) The Franchise Tax Board shall perform all of the following:
- 29 (A) Promulgate rules and regulations as necessary or
30 appropriate to implement this credit.
- 31 (B) Establish application forms and procedures.
- 32 (C) Track credits claimed.
- 33 (D) Post aggregate totals of the credits claimed on the Internet
34 Web site of the Franchise Tax Board.
- 35 (E) Determine when the aggregate total of the credits reaches
36 fifty million dollars (\$50,000,000) for a calendar year.
- 37 (F) Certify that the contributions meet the requirements of this
38 section needed to receive a credit.
- 39 (2) The State Department of Education shall do the following:

1 (A) Adopt rules necessary to determine whether the following
2 meet the requirements of this section:

3 (i) An ESO.

4 (ii) A contribution.

5 (B) Submit a list of eligible ESOs that comply with the
6 requirements of this section to the Franchise Tax Board annually
7 by March 15.

8 (j) Chapter 3.5 (commencing with Section 11340) of Part 1 of
9 Division 3 of Title 2 of the Government Code does not apply to
10 the guidelines or regulations adopted pursuant to this section.

11 (k) This section shall remain in effect only until December 1,
12 2020, and as of that date is repealed.

13 SEC. 4. This act provides for a tax levy within the meaning of
14 Article IV of the Constitution and shall go into immediate effect.

15 ~~SECTION 1. It is the intent of the Legislature to enact~~
16 ~~legislation that would allow a credit against the tax imposed by~~
17 ~~the Corporation Tax Law in the amount of 50 percent of a~~
18 ~~charitable contribution to a nonprofit education scholarship~~
19 ~~organization that provides tuition and transportation fee assistance~~
20 ~~for students with special learning needs, foster youth, and children~~
21 ~~from low-income families, who attend public, charter, or private~~
22 ~~schools. It is the intent of the Legislature that the credit shall not~~
23 ~~exceed \$200,000 per taxpayer, that the credit be awarded on a~~
24 ~~first-come, first-serve basis, and that the credit have an aggregate~~
25 ~~cap of \$50,000,000.~~